

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SAMMY JOHNSON,)	
)	
Plaintiff,)	
v.)	NO. CIV-13-1333-HE
)	
COMANCHE COUNTY BOARD)	
OF COUNTY COMMISSIONS, et al.,)	
)	
Defendants.)	

ORDER


Plaintiff Sammy Johnson, a state prisoner appearing *pro se* and *in forma pauperis* (“*ifp*”), filed this action pursuant to 42 U.S.C. § 1983. Consistent with 28 U.S.C. § 636(b)(1)(B), this matter was referred for initial proceedings to Magistrate Judge Gary M. Purcell. Plaintiff filed with his complaint a motion to proceed *ifp* under 28 U.S.C. § 1915(a) [Doc. #2]. Judge Purcell granted the motion and directed plaintiff to pay an initial partial filing fee of \$7.36, and continued monthly payments in accordance with § 1915(b)(1). *See* [Doc. #6]. Judge Purcell further advised plaintiff that if he did not make the initial payment, or show cause in writing for his failure to do so, his case could be dismissed without prejudice. *Id.* Plaintiff then filed a motion to proceed *ifp* without paying the initial filing fee [Doc. #7], which Judge Purcell construed as a motion for extension of time to make the initial payment. *See* [Doc. #8]. Judge Purcell granted plaintiff an extension until January 24, 2014, to make the initial payment, which plaintiff failed to do. Judge Purcell then issued a Report and Recommendation [Doc. #9], recommending that the case be dismissed without prejudice for failure to pay the initial filing fee.

In his objection [Doc. #11], plaintiff points out that since the issuance of the Report and Recommendation, an \$8.00 payment to cover the initial filing fee has been made, apparently by his friend. Plaintiff further states that he was under the mistaken belief that the payment had been made before the January 24 deadline, and it was not until the receipt of the Report and Recommendation that he learned it had in fact not been paid.

The initial filing fee having been paid, the Report and Recommendation [Doc. #9] is stricken as **MOOT**. Plaintiff may maintain this action by continued monthly payments in accordance with 28 U.S.C. 1915(b)(2) and Judge Purcell's December 20, 2013, order [Doc. #6].

IT IS SO ORDERED.

Dated this 4th day of March, 2014.



JOE HEATON
UNITED STATES DISTRICT JUDGE